

JUL 27 1990

District Director, Philadelphia, PA  
Attn: Chief, Examination Division

Assistant Chief Counsel (Corporate)  
National Office CC:CORP:03

EIN: [REDACTED]

On July 19, 1990, we issued a private letter ruling (PLR) to [REDACTED] ([REDACTED]). The PLR was issued pursuant to section 1504(a)(3)(B) of the Internal Revenue Code, which authorizes the Secretary to waive section 1504(a)(3)(A). Section 1504(a)(3)(A) prohibits reconsolidation of a corporation with an affiliated group filing consolidated returns for five years after the taxable year in which such corporation ceases to be a member of such affiliated group. Thus, the PLR allows [REDACTED] to join in the filing of a consolidated federal income tax return with the affiliated group of which it is the common parent.

During our review of the case, we learned that the parent of an affiliated group to which [REDACTED] had belonged, [REDACTED], had expensed a questionable item in connection with the acquisition of [REDACTED]. The item is \$[REDACTED] in investment counseling and underwriting fees income on the sale of preferred stock. We are bringing this matter to your attention because [REDACTED] is within your jurisdiction.

Prior to [REDACTED], [REDACTED] was included on a consolidated federal income tax return filed by its former parent, [REDACTED] ([REDACTED]). As of the close of [REDACTED], [REDACTED] had acquired [REDACTED] percent of the outstanding common stock of [REDACTED]. As a result, each member of the [REDACTED] affiliated group ceased to be a member of such affiliated group and became a member of the [REDACTED] affiliated group as of [REDACTED].

Solely for the purpose of acquiring [REDACTED], [REDACTED] established two wholly owned subsidiaries: [REDACTED] (Holding), which was a direct subsidiary of [REDACTED]; and [REDACTED] (Acquisition), which was a direct subsidiary of Holding. Between [REDACTED] and [REDACTED], [REDACTED] acquired [REDACTED] percent of the

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common stock and convertible preferred stock of Holding in exchange for approximately \$[REDACTED] in cash.

Between [REDACTED] and [REDACTED], [REDACTED] acquired [REDACTED] through a tender offer by Acquisition for all of the outstanding stock of [REDACTED], and the subsequent mergers (collectively, the "Acquisition") described below. Pursuant to the tender offer, which was commenced in [REDACTED], [REDACTED] purchased [REDACTED] percent of the outstanding common stock of [REDACTED] on [REDACTED]. Following consummation of the tender offer, Acquisition was merged into [REDACTED] on [REDACTED], squeezing out for cash (\$[REDACTED] per share) the holders of [REDACTED] common stock other than Acquisition, Holding and [REDACTED]. Holding and [REDACTED] were then merged into [REDACTED], with [REDACTED] surviving.

As a result of the mergers described above, on [REDACTED], [REDACTED] held approximately [REDACTED] percent of the outstanding common stock and [REDACTED] percent of the preferred stock of [REDACTED]. In [REDACTED], [REDACTED] transferred all of its preferred stock in [REDACTED] to a third party for cash. On its consolidated federal income tax return for its taxable year ended [REDACTED], [REDACTED] treated \$[REDACTED] in investment counseling and underwriting fees as an expense of sale of the preferred stock, which resulted in a capital loss. The capital loss was not used in the [REDACTED] consolidated return.

The Acquisition was initially funded by [REDACTED]'s equity contribution of \$[REDACTED] (\$[REDACTED] for the purchase of the [REDACTED] convertible preferred stock), the issuance by Holding of approximately \$[REDACTED] principal amount of Senior Increasing Rate Notes (assumed by [REDACTED] in the Merger), and funds provided under a revolving line of credit (the "Bridge Financing").

According to certain filings made by [REDACTED] to the Securities and Exchange Commission (SEC), approximately \$[REDACTED] of Permanent Financing was required to pay off the Bridge Financing and to pay certain expenses, including expenses incurred in connection with [REDACTED]'s sale of the [REDACTED] preferred stock in [REDACTED]. Moreover, the SEC filings suggest that [REDACTED] was to pay the \$[REDACTED] investment counseling and underwriting fees that have been claimed as a deduction on the [REDACTED] consolidated return.

[REDACTED] asserts that the formation of Acquisition and Holding and the subsequent merger of Acquisition into

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██████████ and Holding into ██████ should be disregarded for all federal income tax purposes; that the Acquisition should be characterized as a taxable acquisition of the ██████ common stock. As a result, if ██████ paid them, it seems that ██████ should capitalize the \$██████████ in fees as an additional cost for its ██████ common stock.

If you would like to discuss the facts or law involved or we may assist your office in any way in this matter please contact Richard Coss, CC:CORP:03, at (202) 566-3422.

Sincerely,

Assistant Chief Counsel (Corporate)

By (signed) Maura A. Sullivan

Maura A. Sullivan  
Chief, Branch 3

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